



Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of : Scribner et al.

Examiner: A. Ragonese

Serial No. : 09/837,350

Group Art Unit: 3743

Filed : 18 April 2001

For : Expandable Preformed Structures for Deployment in Interior Body
Regions

**TERMINAL DISCLAIMER TO OBVIATE
A DOUBLE PATENTING REJECTION**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Patricia A. Limbach, Esq. (Registration Number 50,295), state that I am attorney of record in the above identified patent application (which I will call the '350 Application). The '350 Application is a continuation of application Serial No. 09/088,459, filed June 1, 1998 (now abandoned) and a continuation-in-part of application Serial No. 08/788,786, filed January 23, 1997 (now U.S. Patent No. 6,235,043), which is a continuation of application Serial No. 08/188,224, filed January 26, 1994 (now abandoned).

I further state that Kyphon Inc. is the assignee of 100% interest in the invention claimed and described in U.S. Patent 6,607,544 and the present '350 Application. The assignment of the U.S. Application Serial No. 09/420,529 (now U.S. Patent 6,607,544) by the inventors to Kyphon Inc. is recorded in the United States Patent Office on Reel/Frame 011547/0059. The assignment of Application Serial No. 09/088,459, the parent of the '350 Application, by the inventors to Kyphon Inc. is recorded in the United

States Patent Office on Reel/Frame 009671/0816. As a result, U.S. Patent 6,607,544 and the present '350 Application are commonly owned by Kyphon Inc.

With respect to the '350 Application, Kyphon Inc. hereby disclaims the terminal part of any patent granted which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,607,544.

Kyphon Inc. hereby agrees that any patent granted on the '350 Application shall be enforceable only for and during such period that the legal title to such patent shall be the same as the legal title to U.S. Patent 6,607,544. This agreement shall run with any patent granted on the '350 Application and shall be binding upon the grantor, its successors, or assigns.

Kyphon Inc. does not disclaim any terminal part of any patent granted on the '350 Application prior to the expiration date of the full statutory term of U.S. Patent 6,607,544 in the event that U.S. 6,607,544 later: (1) expires for failure to pay a maintenance fee; (2) is held unenforceable; (3) is found invalid; (4) is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321(a); (5) has all claims canceled by a reexamination certificate; or (6) is otherwise terminated prior to expiration of its statutory term, except for the separation of legal title as stated above.

Pursuant to 37 C.F.R. 3.73(b), I hereby state that the evidentiary documents accompanying or referred to in this Terminal Disclaimer have been reviewed by the undersigned, and it is certified that to the best of the assignee Kyphon Inc's knowledge and belief, title is in the assignee. I also state that I am authorized by Kyphon Inc. to make this Terminal Disclaimer on its behalf.

Kyphon Inc.

By: *Patricia A Limbach*
Patricia A. Limbach, Esq.
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Attorney of Record